

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re U.S. Patent No. 7,403,687 B2)	
)	
Issue Date: July 22, 2008)	Group Art Unit: 2839
)	
Inventor: Smith et al.)	Examiner: K. M. NGUYEN
)	
Application No.: 10/023,713)	Conf. No. 6867
)	
Filed: December 21, 2001)	
)	
For: REINFORCED TIGHT- BUFFERED OPTICAL FIBER AND CABLES MADE WITH SAME)	

**Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450**

Sir:

DETERMINATION OF PATENT TERM ADJUSTMENT - POST GRANT

The U.S. Patent and Trademark Office (PTO) issued the subject U.S. Patent No, 7,403,687 (the '687 patent) with a patent term adjustment of 762 days. Applicants paid the Issue Fee on June 19, 2008, and agreed with the PTO's determination of patent term adjustment of 762 days, provided the patent issued in a timely manner. The patent issued on July 22, 2008. The three year pendency date for determination of patent term adjustment is December 21, 2004.

In view of the decision of the Federal District Court for the District of Columbia in *Wyeth v. Dudas* on September 30, 2008, patentee submits it is entitled to a total patent term adjustment of 859 days which is the sum of 1310 days of patent term adjustment due to exceeding three year pendency and 1428 days due to U.S. PTO delay in prosecution or a total of 2738 days, minus 1213 overlapping days and 666 days due to applicant delay.

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PATENT
Customer No. 22,852
Attorney Docket No. 09242.0178

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Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

**PETITION UNDER 37 C.F.R. § 1.183 FOR WAIVER
OF THE REQUIREMENT UNDER 37 C.F.R. § 1.705(d)**

Pursuant to 37 C.F.R. § 1.183, Patentee petitions the Commissioner to waive the requirements of 37 C.F.R. § 1.705(d) that any request for reconsideration of the patent term adjustment indicated in an issued patent must be filed within two months of the date the patent issues. The required fee of \$400.00 for the petition under 37 C.F.R. § 1.183 is enclosed.

The U.S. Patent Trademark Office (USPTO) issued the above-referenced U.S. Patent No. 7,403,687 B2 (the '687 patent) on July 22, 2008, with a patent term adjustment (PTA) of 762 days. Subsequently, on September 30, 2008, U.S. District

Court for the District of Columbia ruled in *Wyeth v. Dudas* that the USPTO had made an error in the manner it determined PTA. Specifically, the court's decision relates to situations in which separate time periods of PTA accrue due to PTO examination delay and those time periods do not overlap. The court ruled that in such situations, the PTA should be determined as the sum of the term adjustments of the respective separate time periods, rather than the greater one of the term adjustments, the latter practice being the PTO's manner of PTA determination used to date.


Patentee requests waiver of Rule 1.705(d) to permit filing and consideration of the accompanying Determination of Patent Term Adjustment - Post Grant, in which patentee requests a change in the PTA based on determination in a manner consistent with the court's decision referred to above.

This Petition is accompanied by the required petition fee of \$400.00, as set forth in 37 C.F.R. § 1.17(f). If there are any other fees due in connection with the filing of this Petition, please charge such fees to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: January 15, 2009

By: 
Ernest F. Chapman
Reg. No. 25,961

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**Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450**

Sir:

11/15/09

DETERMINATION OF PATENT TERM ADJUSTMENT - POST GRANT

The U.S. Patent and Trademark Office (PTO) issued the subject U.S. Patent No, 7,403,687 (the '687 patent) with a patent term adjustment of 762 days. Applicants paid the Issue Fee on June 19, 2008, and agreed with the PTO's determination of patent term adjustment of 762 days, provided the patent issued in a timely manner. The patent issued on July 22, 2008. The three year pendency date for determination of patent term adjustment is December 21, 2004.

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Customer No. 22,852
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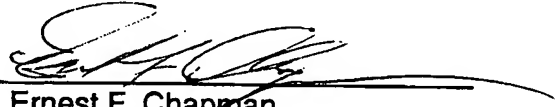
If there are any fees due in connection with the filing of this request, please charge such fees to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: January 15, 2009

By: _____


Ernest F. Chapman
Reg. No. 25,961

Enclosures
EFC/mld

10/023,713. f. 12/21/01. issued 7/22/08 ^{LATE} ~~PAID~~ 1/15/09

12/21/01

12/21/04

3yrs

12/22/04

7/22/08

	<u>Office</u>		<u>App</u>
x > 14 mo.	215	n.f. 9/24/08	x > 3 mo 18. 7/23/04.
i > 4 mo	1213	not all. 3/20/08	supp 648 IDS 5/2/06
	<u>1428</u>		<u>666</u>

1213 overlaps. (- 11/24/04 - 3/20/08) check.

wants ¹⁴²⁸⁺ 1310 - 1213 - 666 = 859.

gets 1428 - 666 = 762

Day : Friday
Date: 4/10/2009

PALM INTRANET

Time: 19:32:47

PTA Calculations for Application: 10/023713

Application Filing Date:	12/21/2001	PTO Delay (PTO):	1428
Issue Date of Patent:	07/22/2008	Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	666
Post-Issue Petitions:	0	Total PTA (days):	762
PTO Delay Adjustment:	0		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
54.5	07/02/2008	PTA 36 MONTHS			
54	07/22/2008	PATENT ISSUE DATE USED IN PTA CALCULATION			
53	06/27/2008	EXPORT TO FINAL DATA CAPTURE			
52	06/25/2008	DISPATCH TO FDC			
51	06/25/2008	APPLICATION IS CONSIDERED READY FOR ISSUE			
50	06/19/2008	ISSUE FEE PAYMENT VERIFIED			
49	06/19/2008	ISSUE FEE PAYMENT RECEIVED			
48	05/02/2008	FINISHED INITIAL DATA CAPTURE			
47	04/15/2008	EXPORT TO INITIAL DATA CAPTURE			
45	03/20/2008	MAIL NOTICE OF ALLOWANCE	1213		34
44	03/19/2008	ISSUE REVISION COMPLETED			
43	03/19/2008	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
42	03/18/2008	ALLOWED CASE RETURNED TO THE EXAMINER FOR CLERICAL PROCESSING			
41	03/18/2008	DOCUMENT VERIFICATION			
40	03/17/2008	EXAMINER'S AMENDMENT COMMUNICATION			
39	05/30/2006	NOTICE OF ALLOWABILITY			
38	05/02/2006	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
37.7	05/02/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		648	34
37	05/02/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
36	04/07/2006	IFW TSS PROCESSING BY TECH CENTER			

7/21/04 - 5/2/06

		COMPLETE			
35	04/07/2006	DATE FORWARDED TO EXAMINER			
34	07/23/2004	RESPONSE AFTER NON-FINAL ACTION		18	21
33	03/29/2006	MAIL NOTICE OF RESCINDED ABANDONMENT			
32	03/23/2006	NOTICE OF RESCINDED ABANDONMENT IN TCS			
29	03/22/2006	MAIL-PETITION TO REVIVE APPLICATION - GRANTED			
28	11/24/2004	PETITION ENTERED			
27	04/08/2005	CORRESPONDENCE ADDRESS CHANGE			
26	11/24/2004	WORKFLOW INCOMING AMENDMENT IFW			
25	11/24/2004	WORKFLOW INCOMING PETITION IFW			
24	11/17/2004	MAIL ABANDONMENT FOR FAILURE TO RESPOND TO OFFICE ACTION			
23	11/15/2004	ABANDONMENT FOR FAILURE TO RESPOND TO OFFICE ACTION			
22	07/23/2004	WORKFLOW INCOMING AMENDMENT IFW			
21	04/05/2004	MAIL NON-FINAL REJECTION			
20	04/05/2004	NON-FINAL REJECTION			
19	01/30/2004	DATE FORWARDED TO EXAMINER			
18	12/19/2003	RESPONSE AFTER NON-FINAL ACTION			
17	09/24/2003	MAIL NON-FINAL REJECTION	215		-1
16	09/22/2003	NON-FINAL REJECTION			
15.7	10/03/2002	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
15	10/03/2002	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
14	08/25/2002	RECEIPT OF ALL ACKNOWLEDGEMENT LETTERS			
13	07/21/2002	CASE DOCKETED TO EXAMINER IN GAU			
12	05/16/2002	CASE DOCKETED TO EXAMINER IN GAU			
11.7	03/21/2002	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
11	03/21/2002	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
10	12/21/2001	MISCELLANEOUS INCOMING LETTER			
9	05/03/2002	APPLICATION DISPATCHED FROM OIPE			
8	05/02/2002	APPLICATION IS NOW COMPLETE			
7	04/12/2002	ADDITIONAL APPLICATION FILING FEES			
		A STATEMENT BY ONE OR MORE INVENTORS			

✓ 73
no

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✓ 714m

6	04/12/2002	SATISFYING THE REQUIREMENT UNDER 35 USC 115, OATH OF THE APPLIC			
5	02/25/2002	NOTICE MAILED--APPLICATION INCOMPLETE--FILING DATE ASSIGNED			
4	01/30/2002	REFERRED BY L&R FOR THIRD-LEVEL SECURITY REVIEW. AGENCY REFERRAL LETTER GENERATED			
3	01/18/2002	IFW SCAN & PACR AUTO SECURITY REVIEW			
2	01/05/2002	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	12/21/2001	INITIAL EXAM TEAM NN			

Search Another: Application#

EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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